IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 377 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI NANJIBHAI PATEL

Versus

BHARATKUMAR RAVJIBHAI

Appearance:

MR JM PANCHAL for Petitioner

MR KB PUJARA for Respondent No. 1

MR BY MANKAD, APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 23/11/2000

ORAL JUDGEMENT

The Original accused of Criminal Case No.6 of 1991 which was pending on the file of the learned JMFC, Ahmedabad (Rural) at Mirzapur, has preferred this Criminal Revision Application under Sec.397 of the

Criminal Procedure Code, 1973 (In short `Cr.P.C.'), challenging legality, correctness and propriety of judgment dated 22nd July, 1993, rendered by learned Additional Sessions Judge, Ahmedabad (Rural) (who will be referred to hereinafter as `the learned Appellate Judge'), in Criminal Appeal No.3 of 1992.

2. Here in this Criminal Revision Application, the Petitioner was accused while Revision opponent No.1 was the original complainant in the said case and, therefore, parties will be referred to hereinafter as complainant and accused respectively at appropriate places.

3. The facts leading to this application in a nutshell are as follows:

3.1 The present petitioner was tried for an offence punishable under Sec.406 of IPC with regard to one Matador No.GRX - 3313. At the end of trial, accused was acquitted under Sec.248(1) of Cr.P.C. The learned Magistrate passed an order directing Police to hand over the possession of the said muddamal to accused.

3.2 Being aggrieved against and dissatisfied with the said order with regard to only muddamal, the original complainant preferred a Criminal Appeal No.3 of 1992 in the Sessions Court, Ahmedabad (Rural) at Mirzapur. The learned Additional Sessions Judge, by rendering his judgment dated 22nd July, 1993, in said Criminal Appeal No.3 of 1992, allowed the appeal and order with regard to handing over the possession of the muddamal to accused has been set aside, and consequently, he passed an order with regard to vehicle with direction to Police to hand over the possession of vehicle No.GRX - 3313 to the appellant i.e.complainant of the Criminal Case No.6/91.

3.3 Being aggrieved against and dissatisfied with the said judgment dated 22nd July, 1993, of the learned Appellate Judge, the original accused has preferred this present Criminal Revision Application.

4. When this application was taken up for hearing, the learned advocates for both the parties jointly submitted that, both the orders with regard to muddamal passed by the learned Appellate Judge and also by the learned Magistrate be set aside without assigning any reasons in the judgment of this Court. They also jointly submitted that suitable directions be given to the appropriate authority for holding an inquiry under Seec.452(1) of Cr.P.C. 1973.

5. Having heard the learned advocates for both the parties and on going through the judgments rendered by both the Courts below, and also on going through the Record and Proceedings of the case which is called for from the trial Court, this Court is of the view that the two impugned orders deserve to be set aside and a fresh inquiry as prescribed under Sec.452(1) of Cr.P.C. is required to be held.

6. In view of the discussion made hereinabove, this Criminal Revision Application is allowed. An impugned judgment dated 22nd July, 1993, of the learned Appellate Judge passed in Criminal Appeal No.3 of 1992 and order with regard to muddamal vehicle passed by the learned JMFC in judgment Exh.31 dated 20.1.92 in Criminal Case No.6/91 are set aside. Instead of directing the learned Magistrate to hold an inquiry under Sec.452(1) of Cr.P.C. 1973, it would be in fitness of things and in the interest of justice if the said inquiry for muddamal vehicle is ordered to be held by the Chief Judicial Magistrate and, therefore, the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur is directed to hold an inquiry under Sec.452(1) of Cr.P.C. with regard to Matador No.GRX - 3313, by affording full opportunity of being heard to both the parties, without being influenced by the observations of this Court, as early as possible, preferably within three months from the date of receipt of writ of this Court. An order with regard to status-quo granted on 1st October, 1993, by this Court (Coram: R.D.Vyas, J.) shall remain operative and effective for the period of three months after conclusion of inquiry to be held pursuant to order by this Court.

With the aforesaid directions, this Criminal Revision Application stands disposed of. Rule is made absolute to the aforesaid extent. Record and Proceedings be sent back immediately to the trial Court.

(H.H. Mehta, J.)

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